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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**THIRTY-FOURTH OMNIBUS OBJECTION  
OF THE USACM LIQUIDATING TRUST TO  
CLAIMS ASSERTING SECURED STATUS**

Hearing Date: September 28, 2007  
Hearing Time: 1:30 p.m.

The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant to § 502 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order denying secured status to certain claims asserting a secured status against USA Commercial Mortgage Company ("USACM"). The USACM Trust is not, by this filing, objecting at this time to any of the claims as unsecured claims, but reserves the right to do

1 so. This Objection is supported by the Court's record and explained in the following  
2 Memorandum.

### 3 **I. JURISDICTION**

4 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
5 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
6 proceeding under 28 U.S.C. § 157(b)(2)(B).

7 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
8 and Bankruptcy Rule 3007.

### 9 **II. BACKGROUND**

10 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
11 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital  
12 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC  
13 ("FTDF" and together with DTDF, the "Funds") (collectively the "Debtors"), filed  
14 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors  
15 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections  
16 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was  
17 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
18 ("Mesirow"), who served as the Chief Restructuring Officer.

19 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
20 business of underwriting, originating, brokering, funding and servicing commercial loans  
21 primarily secured by real estate, both on behalf of investors and for its own account.  
22

23 3. This business included the solicitation of individual investors to purchase  
24 fractional interest in loans that USACM originated and then serviced. These investors,  
25 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
26 USACM's bankruptcy case and in this Objection.

1           4.     Although USACM serviced and sometimes originated the loans in which the  
2 Direct Lenders invested, USACM was not a borrower on these loans.

3           5.     On September 14, 2006, the Court entered its Order Setting Deadline to File  
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The  
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
6 the deadline ("Bar Date") for creditors to file proof of claims

7           6.     On September 25, 2006, Debtors served a copy of the Bar Date Order on  
8 their service lists [Docket No. 1358]. All Creditors, as well as, Direct Lenders were  
9 served with a copy of the Bar Date order as well [Docket No. 1358].

10          7.     On November 6, 2006, a stipulation was filed and an order entered extending  
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
12 No. 1729].

13          8.     On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15          9.     Under the Plan, the USACM Trust is the successor to USACM with respect  
16 to standing to seek allowance and disallowance of Claims.

17          10.    The USACM Trust exists as of the Effective Date of the Plan, which was  
18 March 12, 2007. Geoffrey L. Berman is the Trustee.

19          11.    **Exhibit A** contains a list of Claims against USACM filed by various parties,  
20 most of whom are Direct Lenders, asserting that their Claims are secured or partially  
21 secured (the "Alleged Secured Claims"), which the USACM Trust asks the Court to  
22 disallow as secured claims by this objection. In the aggregate, there are over 1,650  
23 claimants asserting over \$310,000,000 in total Claims.

24          12.    It appears that most of the claimants asserting secured status are Direct  
25 Lenders who are under the misimpression that because their loan investments serviced by  
26 USACM were secured by collateral of the Borrowers, any Claim they might have asserted

1 against USACM would also be secured. To the contrary, these Claims are not entitled to  
2 secured status and should be classified as general unsecured Claims. USACM has no  
3 property that serves as collateral for the Direct Lender loans serviced by USACM. Having  
4 reviewed lien searches and the books and records of USACM, neither USACM nor the  
5 USACM Trust believes that any of the holders of the Alleged Secured Claims were  
6 granted a security interest in any property of USACM, or that any such security interest  
7 was perfected under applicable law.

### 8 9 **III. APPLICABLE AUTHORITY**

10 1. Under the Bankruptcy Code, any Claim for which a proof of claim has been  
11 filed will be allowed unless a party in interest objects. If a party in interest objects to the  
12 proof of claim, the Court, after notice and hearing, shall determine the amount of the  
13 Claim and shall allow the Claim except to the extent that the Claim is “unenforceable  
14 against the debtor . . . under any . . . applicable law for a reason other than because such  
15 claim is contingent or unmatured.” 11 U.S.C. § 502(b).

16 2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
17 § 502(a). This objection is timely under the confirmed Plan.

18 3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
19 3001(f). However, once an objection to the proof of claim controverts the presumption,  
20 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
21 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
22 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff’d*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996). The ultimate  
23 burden of proof as to the validity of a proof of claim “remains at all times upon the  
24 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
25 1039 (9<sup>th</sup> Cir. 2000).

#### IV. OBJECTIONS TO CLAIMS

1. As more particularly described herein, the USACM Trust seeks in this Objection to reclassify the Alleged Secured Claims as general unsecured Claims.

2. These Claims may be the subject of multiple objections herein for any of the reasons stated in this Objection. These Claims may also be subject to prior or subsequently filed objections, and this objection is without prejudice to any other objection by any party in interest, including the USACM Trust.

3. The USACM Trust reserves the right to further object to any and all Claims, whether or not the subject of this Objection, for allowance and/or distribution purposes on any other grounds. The USACM Trust further reserves the right to modify, supplement and/or amend this Objection as it pertains to any Claim or claimant herein.

4. For the convenience of the parties, and pursuant to the Court's direction, the USACM Trust has broken down its objections to secured claims into groups of no more than 50 claimants each. Thus this objection is one of a series of many objections to Claims that assert fully or partially secured status.

5. Exhibit A contains a partial list of the Alleged Secured Claims, filed by various parties, most of whom are Direct Lenders, asserting that their Claims are secured. The USACM Trust objects to these claims on the basis that these Claims are not secured by property of the USACM estate, although they may well be secured by property owned by their Borrowers. Secured claims are claims "by creditors against the estate that are secured by a lien on property in which the estate has an interest." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). None of the Claims listed on Exhibit A are secured by such a lien, and the claimants have offered no evidence in support of their contention. Thus none of these claims are entitled to secured status in this bankruptcy case, and should be classified as general unsecured Claims, subject to further objection.

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Included on Exhibit A are Amended Proofs of Claims identified by Claim number, followed by a “-2” or 10725-00000-2. The original claims were previously reclassified as Unsecured Claims by a prior Order of this Court. The Trust requests that the Amended Claims be deemed filed as Unsecured.

## V. CONCLUSION

For the reasons discussed above, the USACM Trust objects to the secured status asserted in the proofs of claim listed on Exhibit A attached to this Objection and requests that the Court reclassify these claims as general unsecured Claims (albeit subject to possible additional objections). The USACM Trust also requests such other and further relief as is just and proper.

Dated: August 22, 2007.

**LEWIS AND ROCA LLP**

By: /s/ RC (#6593)

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